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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,026	01/09/2004	Michael T. Drummond	031599/263384	7724

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/755,026	<b>Applicant(s)</b> DRUMMOND, MICHAEL T.	
	<b>Examiner</b> Marc A. Patterson	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/6/05, 2/23/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 – 7 and 16 – 22, drawn to a liner, classified in class 428, subclass 36,9.
  - II. Claims 8 – 15, drawn to a method for producing a lined container, classified in class 264, subclass 177.2.
2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a materially different process of using, such as the formation of a container having fewer than ten layers.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Donald Hill on November 9, 2005 a provisional election was made with traverse to prosecute the invention of I, claims 1 – 7 and 16 – 22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8 – 15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bekele (U.S. Patent No. 5,183,706).

With regard to Claims 1 and 5, Bekele discloses an unsupported polymeric liner for a container (forming web for lining the cavity of the container; column 4, lines 39 – 41) comprising a first sealant layer (outer sealable layer; column 3, lines 41 – 46) and multiple layers (column 5, lines 19 – 21) of a bulk layer comprising high density polyethylene or polyamide (column 3, lines 66 – 68; column 4, lines 1 – 6), therefore nylon, and a barrier layer comprising ethylene vinyl alcohol copolymer (column 3, lines 53 – 59) and adhesive layers between the layers (column 4, lines 51 – 54). Bekele fail to suggest a polyamide layer, ethylene vinyl alcohol copolymer, polyamide layer, high density polyethylene layer and high density polyethylene layer, in order. However, Bekele teaches the selection of the ordering of the layers depending on the desired end use of the liner (column 5, lines 13 – 17). Therefore, one of ordinary skill in the art would have recognized the utility of varying the ordering of the layers depending on the desired end use.

It therefore would be obvious for one of ordinary skill in the art to vary the ordering of the layers depending on the desired end use, since the ordering would be readily determined through

routine optimization by one having ordinary skill in the art depending on the desired end use as shown by Bekele. With regard to the claimed aspect of the container being a tubular container, Bekele discloses use of the liner for a container, as stated above, therefore including a tubular container. However, the claimed aspect is directed to an intended use, and is therefore given little patentable weight.

With regard to Claim 2, the first sealant layer disclosed by Bekele is comprised of an ionomer resin (column 3, lines 51 – 52).

With regard to Claim 3, Bekele discloses ethylene / methacrylic acid copolymer (column 3, lines 35 – 40), therefore including ethylene / methacrylic acid copolymer which is partially neutralized with sodium ions.

With regard to Claim 4, Bekele discloses the use of modified high density polyethylene for heat sealing (column 4, lines 28 – 38 and 44 – 46).

With regard to Claims 6 – 7, the claimed aspect of the production of the liner by coextrusion is direction to a process limitation and is therefore given little patentable weight.

7. Claims 16 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bekele (U.S. Patent No. 5,183,706) in view of Drummond et al (U.S. Patent No. 6,350,500).

Bekele discloses a liner for a container as discussed above. With regard to Claims 16 – 22. The liner is extruded (column 5, lines 25 – 26 of Bekele). Bekele fails to disclose a paperboard body ply and a liner ply wound about a mandrel in a partially overlapping fashion and a such that the first sealant layer on one edge contacts the high density polyethylene layer of an opposite edge and is sealed thereto to form a wound liner tube and the paperboard body ply

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wound about the mandrel and adhered and adhered at an inner surface of the paperboard body ply to form a lined tubular composite container.

Drummond et al teaches that it is well known in the art to use a liner ply wound about a mandrel in a partially overlapping fashion and a such that the first sealant layer on one edge contacts the high density polyethylene layer of an opposite edge and is sealed thereto to form a wound liner tube and the paperboard body ply wound about the mandrel and adhered and adhered at an inner surface of the paperboard body ply (column 4, lines 12 – 23) form a lined tubular composite container (column 1, lines 25 – 27) for the purpose of obtaining a container that is used without additional foil layers (column 3, lines 45 – 49). One of ordinary skill in the art would therefore have recognized the advantage of providing for the winding of Drummond et al in Bekele, which comprises a liner, depending on the desired absence of foil of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a paperboard body ply and a liner ply wound about a mandrel in a partially overlapping fashion and a such that the first sealant layer on one edge contacts the high density polyethylene layer of an opposite edge and is sealed thereto to form a wound liner tube and the paperboard body ply wound about the mandrel and adhered and adhered at an inner surface of the paperboard body ply to form a lined tubular composite container in Bekele in order to obtain a container that is used without additional foil layers as taught by Drummond et al.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 11/14/05*

Marc A. Patterson, PhD.

Examiner

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